No. 98-764

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1998

MORTON COMMUNITY UNIT SCHOOL DISTRICT NO. 709,

Petitioner,

vs.

J.M., a minor; M.M. and S.M., individually and as parents and next friends of J.M.; and the ILLINOIS STATE BOARD OF EDUCATION,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

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THE FINDING BY THE COURT OF APPEALS THAT THE SCHOOL DISTRICT WOULD SUFFER NO "UNDUE BURDEN" IS IRRELEVANT TO THE ISSUES RAISED BY THE SCHOOL DISTRICT IN ITS PETITION FOR CERTIORARI

Respondent J.M. urges this Court to deny a writ of certiorari because, according to a finding by the Court of Appeals, Petitioner Morton Community Unit School District No. 709 (the "School District") failed to demonstrate that providing full time health care to J.M. while he attended school would impose an "undue burden" on the School District. The following passage from J.M.'s brief succinctly summarizes J.M.'s argument for denial of a writ based upon the finding of no undue burden by the Court of Appeals:

> The Court reviewed at length the School District's argument against providing the services, which amounted to one of undue burden, but could find no evidentiary basis for the School District to maintain such an argument. (Pet. App. 7a-8a). Writing for the court in the opinion below, Judge Posner observed that Morton made "no effort to show that the expense of a full time nurse for J.M. would be undue in relation to the other calls on the District's budget." (Pet. App. 7a). Such a clear, unambiguous concession that no financial barrier or burden prevented Morton from providing a student services he needed to be in school does not appear in the cases with which Petitioner requests this Court to recognize a conflict. Thus, based on the legal authority cited by the Petitioner, *Detsel*, *Fulginiti* and *Neely*, there is no direct conflict among the circuits which would warrant certiorari. (Brief in opposition by Respondent J.M. pages 9-10)

Despite J.M.'s assertions to the contrary, the School District did not argue undue burden to the Court of Appeals. The School District did not argue undue burden because IDEA contains no language which excuses a school district from providing a mandated service merely because that mandated service might be financially burdensome. Consistent with the fact that IDEA contains no defense of undue financial burden, none of the case law interpreting IDEA excuses a school district from providing a service mandated by IDEA solely because that service was expensive. The reverse situation is also true. A school district has no obligation to provide a service which IDEA does not mandate merely because the school district could afford to pay for that service. Consequently, the School District made no effort to show that the expense of a full time nurse for J.M. would be undue in relation to the other calls on its budget, because the extent to which the School District can or cannot afford to pay the cost of a full time nurse for J.M. is irrelevant to the question of whether or not IDEA requires the School District to provide that nurse.

The obligation of the School District to J.M. depends not on the relative expense of the requested service, but on the nature of the service. If the full time health care which J.M. must have qualifies as a "related service" within the meaning of IDEA, then IDEA requires the School District to provide that service regardless of whether or not the provision of that service imposes a significant financial burden on the School District. However, if, as the School District asserts, the full time health care which J.M. requires while attending school falls within IDEA's medical services exclusion, then IDEA excuses the School District from providing that full time health care, even if the $20,000 cost of providing that service is not, in the estimation of the Court of Appeals, an undue burden. Because the School District's obligation to J.M. depends not upon the cost of the services which he requires, but rather on

the nature of those services, the finding by the Court of Appeals that the School District would suffer no undue burden if required to provide full time health care services to J.M. while he attends school is irrelevant to the question of whether or not the School District must provide that health care at its expense.

A fair review of the entire opinion of the Court of Appeals will disclose that the discussion by the Court focuses primarily on the applicability of the medical services exclusion to the full time health care which J.M. requires. The inclusion by the Court of Appeals of a gratuitous finding that the School District would suffer no undue financial burden, particularly where the School District did not assert undue burden as a defense, does not detract from the central issue in this case. That issue, the applicability of IDEA's medical services exclusion to full time health care required by a student while attending school, is precisely the same issue considered in decisions by the various Courts of Appeals cited in the School District's Petition for Certiorari, and precisely the same issue which has led those Courts of Appeals in two separate lines of cases to reach diametrically opposite conclusions. This case squarely presents as its only substantive issue the meaning and extent of IDEA's medical services exclusion. The finding by the Court of Appeals that the School District would suffer no undue financial burden and J.M.'s argument based on that finding should be ignored during this Court's evaluation of the School District's petition for writ of certiorari.

Respectfully submitted,

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